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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

Nos. 453 to 475.

JOHN M. SLOAN, ET AL., Appellants,

vs.

THE UNITED STATES, ET AL.

Appeals from the Circuit Court of the United States for the District of Nebraska.

DEFENDANT'S BRIEF ON MOTION TO DISMISS APPEALS.

These cases were heard in the United States Circuit Court on the merits and were disposed of on the merits. The appeals were sued out directly to this court on the theory that the said actions involved the validity or construction of certain treaties between the United States and the Omaha tribe of Indians: Whereas, the said several actions are by the respective plaintiffs, claiming the right to an allotment of lands on the Omaha Indian Reservation under the provisions of section 5, of an act of August 7, 1882, (22 U. S., 341.)

The right of the respective plaintiffs to said allot-

ments depends upon questions of fact, to-wit: Whether they were respectively members of the Omaha tribe of Indians residing on said reservation at the time when said act of 1882 was passed. That said respective complainants are not asserting any right under nor claiming any right to an allotment under and by virtue of any treaty.

It is averred in the respective bills of complaint of which one may be taken as an example, (rec. p. 4) that the United States resists the plaintiffs right to an allotment on the ground that the plaintiff was not residing on the Indian Reservation at the date of the treaty of March 6, 1865, within the meaning of the 4th article of said treaty limiting allotments to individual members thereof, including their half-breed and mixed blood relatives now residing with them.

In said bills of complaint it is further averred that the United States resists the plaintiffs right to allotment on the ground that the plaintiff had received an allotment under and by virtue of the 10th article of a treaty of July 15th, 1830. (Rec. p. 5).

The point we make is that the respective plaintiffs are not claiming any right to an allotment under and by virtue of either of said treaties, but aver simply that the United States resists the plaintiffs right to allotment for the reasons aforesaid. That is to say, that the plaintiffs in their bills invoke an adjudication upon the validity or construction of these respective Indian treaties, by anticipating the nature of the defense. To entitle plaintiffs to sue out their bills direct to this court it is necessary as we think that they should assert some right, title, privilege or immunity dependent on said treaties, and that it is not sufficient to

anticipate a defense of that sort which may never be made, and which the court may not find it necessary to pass upon and determine in the cases.

Filhiol v. Maurice, 185 U. S., 108-110.

Muse v. Arlington Hotel Co., 168 U. S., 430-435.

Borgemeyer v. Idler, 159 U. S., 408-414.

Jno. L. Webster

Solicitor for Defendants.